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Sea Stores of Foreign Vessels.

IN THE

Supreme Court of the United States

October Term, 1922

THE CUNARD STEAMSHIP COMPANY, LTD., and ANCHOR LINE (HENDERSON BROTHERS) LTD., *Appellants,* *against* ANDREW W. MELLON, *et al.,* *Appellees.*	#659.
OCEANIC STEAM NAVIGATION COMPANY, LTD., *Appellants,* *against* ANDREW W. MELLON, *et al.,* *Appellees.*	#660.
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NAVIGAZIONE GENERALE ITALIANA, *Appellants,* *against* ANDREW W. MELLON, *et al.,* *Appellees.*	#678.

APPELLANTS' REPLY BRIEF.

GEORGE W. WICKERSHAM,
Counsel for Appellants.

Errata in Appellants' Principal Brief:

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p. 7: for "at page 67" read "at page 75."

p. 14: for "mentioned (p. 67)" read "mentioned (p. 75)."

p. 15: for "brief (p. 69)" read "brief (p. 77)."

p. 15: for "brief (p. 76)" read "brief (p 84)."

pp. 16 and 19: for "all territories subject" read "all territory subject."

p. 55: for "Ch. T." read "Ch. J."

Index of Authorities Cited.

Statutes, etc.

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Appeals from the District Court of the United States for the Southern District of New York.

APPELLANTS' REPLY BRIEF.

I.

The Government in its brief argues that a foreign ship within the territorial waters of the United States is

subject to the jurisdiction of the United States. This proposition we do not dispute. We do contend that such jurisdiction is to be exercised in conformity with the principles of international law and the usages and customs of intercourse with foreign nations; that certain well recognized exceptions to the exercise of that jurisdiction always have been claimed and observed by our Government, and that where Congress has intended to extend the police regulations of the United States over foreign ships within our ports, it has expressly declared such intention in unmistakable terms. The Government cites the case of *United States* v. *Bowman* (43 Sup. Ct., 39), No. 69, October Term, 1922, recently determined by this Court, to the effect that a merchant ship wherever she goes carries the laws of her country, and for a violation of them, those on board may be subjected to punishment, while at the same time, when she enters the waters of another nation, she becomes also subject to the jurisdiction of the laws of the littoral state; which is undoubtedly true, to the extent to which these laws are applied by the legislative power of such state to such ships. The distinction is evidenced by the decisions of this Court in the application of the patent laws of the United States. Thus, in *Brown* v. *Duchesne*, 19 How., 183, cited at pages 34-35 of our principal brief, the Court held that the right of property and exclusive right of use granted by the laws of the United States to a patentee did not extend to a foreign merchant vessel lawfully in one of our ports; while in *Gardiner* v. *Howe*, 2 Cliff., 462, Fed. Cas. No. 5219, the owner of the same patent as that considered by the Court in *Brown* v. *Duchesne*, having sued the owner of an American ship for its use and the defendant claiming that the improvement was applied only to the mechanism of the vessel when employed on the high seas and was only used on the high seas, without the jurisdiction of the United States, and therefore that the

patent laws of the United States were not applicable, Mr. Justice CLIFFORD, sitting in the Circuit Court, held that the use of the patented invention without the consent of the patentee, upon an American ship, even on the high seas, was an act of infringement, saying:

> "The patent laws of the United States afford no protection to inventions beyond or outside of the jurisdiction of the United States; but this jurisdiction extends to the decks of American vessels on the high seas, as much as it does to all the territory of the country, and for many purposes is even more exclusive."

The opinion of Mr. Justice CURTIS in *Brown* v. *Duchesne*, in the Circuit Court (2 Curt., 371 Fed. Cas. No. 2004), carefully draws the distinction. He first states that the terms of the grant of exclusive right to use the patented invention

> "are broad enough to include every use, by all persons *within the territory of the United States*. But this grant, and the exclusive rights conferred by it, are creatures of the municipal law of our country; and however comprehensive may be its terms, they cannot be so construed as to include, either persons or things, not within the jurisdiction of the patent laws. Persons or things may be out of the jurisdiction of the municipal law, either because they are locally, where it is not in the power of our country to extend its operations, or because the nation has chosen not to exert its entire legislative power, but to leave particular persons or things, though within its dominion, free from the operations of its laws. This last exemption, depending solely on the will of the nation, may either be entire, or partial and limited, according to its own choice, which may be manifested through the legislative power, by express exemptions or restrictions in the text of written laws, *or it may be derived from the usages and practice of civilized nations, and the presumed intent of each, to conform thereto, until an opposite pur-*

pose is manifested; and in the absence of positive legislation, courts of justice in this country and in England have constantly and rightfully exercised the power of determining, in what cases and to what extent, it is the will of the nation, not to extend to foreigners or their property, the municipal laws, which in similar cases, govern our own citizens." (Italics ours.)

Reference was then made to the case of *The Exchange*, 7 Cranch, 116; *The Appollon*, 9 Wheat., 362; *In re Bruce*, 2 Cromp. & J., 437; *Universities of Oxford & Cambridge* v. *Richardson*, 6 Ves., 689; *Thompson* v. *Advocate General*, 12 Cl. & F., 1. The learned judge then continued as follows:

"Upon the same footing of a presumed consent of the nation, rests the well-settled exemption of ambassadors and public ministers, from the jurisdiction of the laws of the country to which they are accredited. And, indeed, those numerous cases of contract, and distribution of personalty, the status of persons, and many other relations, which are allowed to be governed by the laws of the domicile or of the place of the contract, though foreign to the nation which permits their operation, are all instances of partial exemption of the persons or property of foreigners from the jurisdiction of our municipal laws, not provided for by any expressed will of the legislative power, but implied by courts of justice, from their general fitness and convenience, and from the presumed acquiescence of our country in principles and usages, which civilized countries generally have practiced. Conceding therefore, that this French vessel was within our territory, and subject to all our laws, so far as it was the will of the United States to extend those laws over it, and that the terms of the grant to the plaintiff are broad enough to cover every use of the thing patented, within the jurisdiction of the laws of the United States, *the inquiry still remains, whether a law of this character, was intended by Congress to apply to*

and govern a vessel of a foreign friendly nation, entering our ports, by our consent, for purposes of trade." (Italics ours.)

All of the decisions cited in the opposing briefs in support of the proposition that the Prohibition Act applies to sea stores on foreign ships were based upon statutes specifically made applicable to foreign vessels. Thus, the *Abby Dodge* v. *United States*, 223 U. S., 166 (brief of *Amici Curiae*, pp. 28, *et seq.*) turned upon the enforcement of a statute (34 Stat., 313) which made it unlawful "to land, deliver, cure, or offer for sale at any port or place in the United States any sponges taken by means of diving or diving apparatus" from certain waters. The statute prohibited the landing, delivery, curing, or offering for sale *at any port* or *place in the United States*. It seems never to have occurred to anyone that the *possession* on the ship of sponges which could not be landed because of this prohibition was itself prohibited.

So the Harter Act (27 Stat., 445) declared it to be unlawful for the representative or owner of "*any* vessel" transporting merchandise "*from or between ports of the United States and foreign ports*, to insert in" a bill of lading a clause relieving against damage for negligence in proper storing, etc. This was a regulation of foreign commerce which, necessarily, was held applicable to *any* ship, domestic or foreign, engaged in such commerce. *Knott* v. *Botany Mills*, 179 U. S., 69.

So the Limited Liability Act of 1851, U. S. R. S., Secs. 4282, *et seq.*, prescribed a rule of decision for the Courts of the United States with respect to the limitation of liability of the owners of vessels for losses arising from certain causes. The statute did not discriminate between the owners of foreign and of domestic vessels, and therefore was held applicable to both when suing or being sued in our Courts. *The "Scotland": National Steam Nav. Co.* v. *The "Kate Dyer,"* 105 U. S., 24.

Statutes (*e. g.*, 29 Stat., 604) forbidding importation of certain merchandise, such as teas of inferior quality (*Buttfield* v. *Stranahan*, 192 U. S., 470), are wholly irrelevant to the present question which is not one of Congressional *power*, but of *construction* of a constitutional amendment, and of the statute purporting to carry out its provisions.

II.

The construction contended for by the Government would make it impossible to treat even a foreign vessel forced by stress of weather into one of our ports, as exempt from the provisions of our laws, and the vessel of a foreign nation carrying a cargo of vinous or spirituous liquors between foreign ports, thrown by stress of weather upon our shores, would be forfeit by our laws, by force of the 18th Amendment and the National Prohibition Act, irrespective of all principles of international law and customary usages of civilized nations. This seems to us a perfect *reductio ad absurdum* of the Government's contention that the 18th Amendment operates *ex proprio vigore* wherever the United States may exercise its power, whether strictly within its "territory" or otherwise.

Our Government consistently has maintained, as against foreign governments, immunity from penalties for violating neutral laws, or liability to seizure for bringing goods subject to customs revenues within the jurisdiction, or for other violation of legislation affecting merchant vessels in foreign ports, and itself has conceded to foreign merchant vessels such immunity, where such vessels were forced by stress of weather to enter the jurisdictional waters of a country foreign to the flag of the ship. See 2 Moore's Dig. Int. L., pp. 339, 362.

An interesting example of this doctrine occurred in the cases of the *Enterprise*, *Hermosa* and *Creole*, which

arose after August 1, 1834, when the act of the British Parliament of August 28, 1933 (3 & 4 Wm. IV c. 73), for the abolition of salvery in the British colonies took effect, and the British Government refused to acknowledge any liability for the liberation of slaves which were on vessels seized by the British colonial authorities, upon the ground that the slaves on entering British jurisdiction became free. The United States, on the other hand, successfully maintained that "if a vessel were driven by necessity to enter the port of another nation the local law could not operate so as to affect existing rights of property as between persons on board, or their personal obligations or relations under the law of the country to which the vessel belonged. In the case of the *Creole*, this argument was emphasized by the fact that the vessel was brought into British jurisdiction by means of a crime against the law of the flag." 2 Moore's Dig. Int. L., p. 352. So, where a coasting vessel bound from one port to another in the United States was carried by mutineers into a foreign port, the officers of such vessel were held to be entitled to aid from the local authorities in recovering control, and the cargo was held not subject to confiscation or disposal in such port "because it may consist of articles which are there held not to be the subject of property" (*Ibid*).

Mr. Webster, in his letter to Mr. Everett, U. S. Minister to England, January 29, 1842, cited in 2 Moore's Dig. Int. L., pp. 352, 353, wrote as follows:

> "In cases of vessels carried into British ports by violence or stress of weather, we insist that there shall be no interference from the land, with the relation or personal condition of those on board, according to the laws of their own country; that vessels under such circumstances shall enjoy the common laws of hospitality, subjected to no force, entitled to have their immediate wants and necessities relieved, and to pursue their voyage without molestation."

ported merchandise: *Provided*, That bunker coal, bunker oil, ships' stores, sea stores, or the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the United States, which are delayed in port for any cause, may be transferred under a permit by the collector and under customs supervision from the vessel so delayed to another vessel of the same line, and owner, and engaged in the foreign trade without the payment of duty thereon." (Italics ours.)

Section 583, requires the master to deliver to designated United States authorities one copy of the manifest of such vessel.

"SEC. 584. FALSIFY OR LACK OF MANIFEST.—Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of $500, and if any merchandise, including sea stores, is found on board of or after unlading from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle shall be liable to a penalty equal to the value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge shall be subject to a penalty of $500; *Provided*, That if the collector shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred.

"If any such merchandise so found consist of smoking opium or opium prepared for smoking,

> the master of such vessel or the person in charge of such vehicle shall be liable to a penalty of $25 for each ounce thereof so found. Such penalty shall constitute a lien upon such vessel which may be enforced by a libel *in rem*. Clearance of any such vessel may be withheld until such penalty is paid or until a bond, satisfactory to the collector, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provisions of law." (Italics ours.)

Section 586, imposes a penalty upon the master of any vessel from a foreign port or place who allows any merchandise "*(including sea stores),*" to be unladen before he has received a permit, with certain exceptions as to a vessel unladen because of accident, stress of weather or other necessity.

Section 587, imposes upon the master, and any one assisting him, in case any merchandise "*(including sea stores)*" unladen in violation of the provisions of Section 586 is transshipped to or placed in or received on another vessel.

Section 2796 R. S., which provided for the taxation of any excessive amount of goods listed as ship stores, is not re-enacted, save as it is provided in Section 432 of the Tariff Act of 1922, that any ship stores landed without a permit are subject to forfeiture, and in Section 446, that any ship's stores landed and delivered from a vessel shall be considered as imported merchandise.

With the exception of the provisions left in Section 446, the provisions omitted from the various sections of the Revised Statutes, above quoted, are those applicable to and included in the earlier legislation for the purpose of facilitating the collection of import duties. The importation of intoxicating liquor being prohibited by the Eighteenth Amendment and the statute, these provisions were eliminated from the re-enacted portions of the Tariff Law of 1922. But it is significant, that while pro-

vision is made for the confiscation of smoking opium, if any be found, as provided in Section 584, nowhere is there a line prohibiting the inclusion in the sea stores which shall be shown on the manifest and which by Section 446 are expressly permitted to be retained on board, of intoxicating liquors. Assuredly, if Congress had intended to extend the provisions of the Prohibition Law to liquor carried as sea stores on foreign vessels coming into our ports, it would have said so in some one of the administrative sections contained in the Tariff Act of 1922. It also is significant that in permitting sea stores described in the manifest to remain on board the vessel, Congress did not attempt to narrow the definition of ship's or sea stores so long established and recognized by both the executive and judicial branches of our Government. (See our principal brief, pp. 52-57.) The omission from the provisions of the Tariff Act of 1922 of so much of R. S., Section 2775, as required the master to particularize the quantity and kind of wines and spirits carried as sea stores, merely eliminated provisions designed to facilitate the collection of import duties imposed in case such wines or spirits were landed in violation of the statute. This section was originally part of the "Collection Act" of March 2, 1799. It is found in the Revised Statutes under the title "Collection of Duties Upon Imports." It covered two distinct subject-matters, to wit, general merchandise and sea stores, in the following language:

> "The master of any vessel having on board distilled spirits or wines shall * * * in addition to the requirements of the preceding section, report * * * [1] * * * the quantity and kinds of spirits and wines, on board of the vessel, particularizing the number of casks, vessels, cases * * * with their marks or numbers, [2] as also the quantity and kinds of spirits and wines, on board such vessel as sea stores * * *."

The purpose of this section clearly was to serve as an additional aid in the enforcement of the collection of duties upon imported liquor. The inclusion of the provision of [2] with reference to sea stores is quite consistent with this purpose, for R. S. Section 2796 provides "that whenever it appears that the quantities of the articles * * * reported as sea stores are excessive, the collector * * * may * * * estimate the amount of the duty on such cases * * *" and proceed to collect it.

The Circuit Court of Appeals for the Fifth Circuit, in *United States* v. *Santani*, 279 Fed., 534, 536, in construing R. S. Sections 2766, 2867 and 2872, which are a part of the same title as R. S. 2775, said, per BRYAN, Cir. J.:

> "*In order to secure the collections of customs duties*, it is required that ships entering ports of the United States shall carry manifests containing a list of all merchandise, and shall not unload cargoes without exhibiting the manifests, and without affording an opportunity for inspection. It is not only goods entitled to entry that are required to be shown on the manifests, but prohibited goods are also required to be listed. Otherwise it would be impossible to prevent evasions, frauds upon the revenue, and prohibited importations. * * * The inclusion of Sec. 2766 was for the purpose of *aiding in the enforcement of the law*." (Italics ours.)

R. S. Sec. 2775 clearly was enacted for the same purpose.

The repeal of R. S. Sec. 2775, together with all other sections of the Revised Statutes above referred to bearing upon the enforcement of "collection of duties upon imports," is merely a logical and quite incidental part in the recasting of the administrative provisions of the import duty enactments now embraced in the new Tariff Act of 1922. The fact that the *importation into the United States* of liquor is now illegal would make a re-

enactment of R. S. Section 2775 totally unnecessary. The repeal, without re-enactment of this section, is merely the elimination of dead wood in a new series of import duty enactments and no such significance can be attached to it as that sought to be attached by the Government.

To paraphrase the language of the Government brief, it would seem to follow by necessary implication that if Congress, when it passed the Tariff Act of September 21, 1922, and repealed the provisions of the Revised Statutes above provided, had intended to prohibit liquors from being included as sea stores, it would have made some specific provision to that end.

IV.

Despite the fact so eloquently set forth in the Government's brief, that the Prohibition Amendment and Laws are the fruition of half a century of ardent efforts, prosecuted with religious zeal, we cannot understand why they should be given wider scope than the fundamental guarantees against unreasonable searches and seizures, of trial by jury; of protection against loss of life, liberty or property save by due process of law, of double jeopardy, of excessive bail or cruel and unusual punishments—rights which from the time of Magna Charta to the present day have been regarded by Englishmen and Americans as the foundation stones of civilized life. Yet these, outside of the limits of continental United States, in its territories, on its ships, in the administration of laws by its consular agents, depend upon the will of Congress and are not within the protection of the Constitution itself.

In re Ross, 140 U. S., 453;
Scott v. *Sandford*, 19 How., 393;
National Bank v. *Yankton*, 101 U. S., 129;
De Lima v. *Bidwell*, 182 U. S., 1, 1096;

Downes v. *Bidwell*, 182 U. S., 244;
Mormon Church v. *U. S.*, 136 U. S., 1.
Reynolds v. *U. S.*, 98 U. S., 145;
Hawaii v. *Mankichi*, 190 U. S., 197;
Rassmussen v. *U. S.*, 197 U. S., 516.

The Eighteenth Amendment prohibits certain acts, such as the manufacture and sale of intoxicating liquors for beverage purposes, within the United States, "and all *territory* subject to the jurisdiction thereof."

The Thirteenth Amendment declares that the status of slavery never shall exist "within the United States, or any *place* subject to their jurisdiction." The difference in the words employed cannot be ignored. This Court said in the *National Prohibition Cases*, 253 U. S., 350, 386:

> "The first section of the Amendment * * * is operative throughout the entire territorial limits of the United States."

Of the Thirteenth Amendment, this Court, in *Clyatt* v. *United States*, 197 U. S., 207, 216-18, said, per BREWER, J.:

> "This amendment denounces a status or condition, irrespective of the manner or authority by which it is created. * * * It is not open to doubt that Congress may enforce the Thirteenth Amendment by direct legislation, * * * This legislation is not limited to the Territories or other parts of the strictly National domain, but is operative in the States *and wherever the sovereignty of the United States extends.*"

The power of the United States to make Prohibition applicable to sea stores on foreign merchant vessels is not doubted. But we most earnestly contend that it has not done so by the existing provisions.

It is not accurate to say, as the Government does in its brief, that the prohibition is "aimed at the total eradica-

tion of the use of intoxicating liquors of every kind and under all circumstances, except for strictly limited medicinal and sacramental purposes." (Appellees' Brief, p. 15.)

The Amendment aims only at intoxicating liquors for beverage purposes. The Act expressly permits (Title II, Section 3) the manufacture, purchase, sale, export, import, possession and transportation of "liquor for non-beverage purposes and wine for sacramental purposes." It also expressly permits the "purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses" *(ibid)*. It expressly permits the storage in bonded warehouses of all liquor manufactured prior to the taking effect of the Act (Title II, Section 37). By the Amending Act of November 23, 1921 (42 Stat., 222, 223), when the amount of spirituous liquor in distilleries and bonded warehouses at the date of its passage shall have been reduced to a quantity insufficient to supply its need for non-beverage purposes, and such need cannot be supplied by production within the United States, enough may be imported from foreign countries to meet such non-beverage needs (Section 2). This is very different from the way in which our laws deal with cocaine and opium. There is a broad distinction between these drugs, which never can be safely entrusted to one who is not a physician, and such alcoholic beverages as have been freely used since the dawn of history and now are freely used in most parts of the world, and whose use is expressly permitted by law in the homes of the United States.

The fact is, that the attempt to enforce prohibition has made such a profound impression upon the official mind, that the limitations of the Eighteenth Amendment have been lost sight of. To say that the Amendment and the Act aim to exclude all alcoholic beverages from the United States, is simply to disregard their provisions. To contend that the mere presence of such beverages

among the sea stores of foreign ships which happen to be in American ports violates the intent of the framers of the Amendment and the Act, ignores the language of these measures. When Congress intends wholly to exclude an article from its jurisdiction, it legislates as it has done with respect to smoking opium. The presence of alcoholic beverages among the sea stores of a foreign ship is no more a violation of our prohibitory system than the presence of such commodities in the homes, the apothecary shops, or the bonded warehouses of our country, which is expressly allowed. There is no more danger that liquors in sea stores on foreign ships shall escape and corrupt our people than that there shall be leakage from the millions of gallons stored in United States bonded warehouses. The *spirit* of the prohibition as enacted by law does not require the exclusion of these stores. The *letter* of the Amendment and the Act does not extend to such stores, if they be construed in conformity with established rules of construction of statutes to avoid conflict with international law or international usage.

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OPINION

CUNARD STEAMSHIP COMPANY, LTD., ET AL. *v.* MELLON, SECRETARY OF THE TREASURY, ET AL.

OCEANIC STEAM NAVIGATION COMPANY, LTD., *v.* MELLON, SECRETARY OF THE TREASURY, ET AL.

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NAVIGAZIONE GENERALE ITALIANA *v.* MELLON, SECRETARY OF THE TREASURY, ET AL.

INTERNATIONAL MERCANTILE MARINE COMPANY *v.* STUART, ACTING COLLECTOR OF CUSTOMS FOR THE PORT OF NEW YORK, ET AL.

UNITED AMERICAN LINES, INC., ET AL. *v.* STUART, ACTING COLLECTOR OF CUSTOMS FOR THE PORT OF NEW YORK, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Nos. 659–662, 666–670, 678, 693, 694. Argued January 4, 5, 1923.—Decided April 30, 1923.

1. The words "transportation" and "importation," in the Eighteenth Amendment, are to be taken in their ordinary sense, the former comprehending any real carrying about or from one place to another, and the latter any actual bringing into the country from the outside. P. 121.
2. The word "territory," in the Amendment (in the phrase "the United States and all territory subject to the jurisdiction thereof,") means the regional areas, of land and adjacent waters, over which the United States claims and exercises dominion and control as a sovereign power,—the term being used in a physical, not a metaphorical sense, and referring to areas and districts having fixity of location and recognized boundaries. P. 122.
3. The territory subject to the jurisdiction of the United States includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles; and this territory, and all of it, is that which the Amendment designates as its field of operation. P. 122.
4. Domestic merchant ships outside the waters of the United States, whether on the high seas or in foreign waters, are part of the "territory" of the United States in a metaphorical sense only, and are not covered by the Amendment. P. 123.
5. The jurisdiction arising out of the nationality of a merchant ship, as established by her domicile, registry and use of the flag, partakes more of the characteristics of personal than of territorial sovereignty, is chiefly applicable to ships on the high seas where there is no territorial sovereign; and, as respects ships in foreign

territorial waters, it has little application beyond what is affirmatively or tacitly permitted by the local sovereign. P. 123.

6. The Amendment covers foreign merchant ships when within the territorial waters of the United States. P. 124.

7. A merchant ship of one country, voluntarily entering the territorial limits of another, subjects herself to the jurisdiction of the latter. The jurisdiction attaches in virtue of her presence, just as with other objects within those limits. During her stay she is entitled to the protection of the laws of that place, and correlatively is bound to yield obedience to them. The local sovereign may, out of considerations of public policy, choose to forego the exertion of its jurisdiction, or to exert it in a limited way only, but this is a matter resting solely in its discretion. P. 124.

8. The Eighteenth Amendment does not prescribe any penalties, forfeitures, or mode of enforcement, but by its second section leaves these to legislative action. P. 126.

9. The only instance in which the National Prohibition Act recognizes the possession of intoxicating liquor for beverage purposes as lawful, is where the liquor was obtained before the act went into effect and is kept in the owner's dwelling for use therein by him, his family, and his *bona fide* guests. P. 127.

10. Examination of the National Prohibition Act, as supplemented November 23, 1921, c. 134, 42 Stat. 222, shows,

(*a*) That it is intended to be operative throughout the territorial limits of the United States, with the single exception of liquor in transit through the Panama Canal or on the Panama Railroad,

(*b*) That it is not intended to apply to domestic vessels when outside the territorial waters of the United States,

(*c*) That it is intended to apply to all merchant vessels, whether foreign or domestic, when within those waters, save as the Panama Canal Zone exception provides otherwise. Pp. 127–129.

11. Congress, however, has power to regulate the conduct of domestic merchant ships when on the high seas, or to exert such control over them when in foreign waters as may be affirmatively or tacitly permitted by the territorial sovereign. P. 129.

12. The antiquity of the practice of carrying intoxicating liquors for beverage purposes as part of a ship's sea stores, the wide extent of the practice and its recognition in a congressional enactment, do not go to prove that the Eighteenth Amendment and the Prohibition Act could not have been intended to disturb that practice, since their avowed and obvious purpose was to put an end to prior practices respecting such liquors. P. 129.

13. After the adoption of the Amendment and the enactment of the National Prohibition Act, Congress withdrew the prior statutory recognition of liquors as legitimate sea stores. Rev. Stats., § 2775; Act of September 21, 1922, c. 356, Tit. IV, and § 642, 42 Stat. 858, 948, 989. P. 130.
14. The carrying of intoxicating liquors, as sea stores, for beverage purposes, through the territorial waters or into the ports and harbors, of the United States, by foreign or domestic merchant ships, is forbidden by the Amendment and the act. P. 130.

284 Fed. 890, affirmed.
285 Fed. 79, reversed.

APPEALS from decrees of the District Court dismissing, on the merits, as many suits brought by the appellant steamship companies for the purpose of enjoining officials of the United States from seizing liquors carried by appellants' passenger ships as sea stores and from taking other proceedings against the companies and their vessels, under the National Prohibition Act.

Mr. George W. Wickersham for appellants in Nos. 659–662, 666–670, and 678.

I. Neither the Eighteenth Amendment, nor the National Prohibition Act, properly construed, requires the application of the prohibition to every place where the United States may exercise its power.

This statute contained no provision defining the territory within which it should be operative. It, therefore, was governed by the provisions of Rev. Stats., § 1891: "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States."

A question having arisen as to the jurisdiction of the courts in the territories and insular possessions of the United States to enforce the act, a section was enacted in the Supplemental Act of November 23, 1921. An examination of the debates preceding this discloses only a

most perfunctory consideration of the section. It clearly appears that the dominating purpose underlying its inclusion in the act was to give power to the courts of Hawaii and the Virgin Islands to enforce the statute.

There is nothing else in all of the many pages of the Congressional Record devoted to a discussion of these two acts which throws any further light upon the territorial limitations of their application. Especially is there nothing to indicate that Congress was extending the application of the law to any place not previously embraced within the description contained in the Amendment, "the United States and all the territories subject to the jurisdiction thereof." It surely is a strained construction to hold that a foreign ship temporarily within American waters is embraced within the phrase "the territories subject to the jurisdiction" of the United States. Nothing in the legislative history of the act supports the contention that Congress had any such intention.

Evidently Congress was in some doubt as to whether or not the National Prohibition Act, *ex proprio vigore*, applied to territories which had not been embodied within the United States, and, therefore, deemed it necessary specifically to extend it to such territory. The Philippine Islands undoubtedly are territory subject to the jurisdiction of the United States, yet we have not heard that the Eighteenth Amendment *ex proprio vigore* applies to them, nor that the National Prohibition Act governs them. Moreover, § 20, Tit. III, of that act itself involves a recognition of the fact that the statute by its own terms did not apply to everything subject to the jurisdiction of the United States, because it specifically provides for its application to the Canal Zone—which has been defined as not a "territory" but "a place subject to the jurisdiction of the United States" (25 Ops. Atty. Gen. 441), and also expressly provides that it shall not apply to liquor in transit through that zone by railroad or steamship.

It is difficult to understand why, if Congress was right in supposing it could exclude transportation of liquors from the application of the Amendment under any circumstances, it could not exclude it by failure specifically to include, as well as by an exception expressly grafted on to a comprehensive inclusion.

In our view, § 20, Tit. III, involves the expression of an important recognition by Congress that it has power under the Amendment to exclude from the operations of prohibition in some instances, and, if that be true, the words *"territory subject to the jurisdiction thereof"* in the Eighteenth Amendment cannot mean *"wherever the United States may exercise its power,"* as contended by the Government.

The conclusions announced by this Court in the *National Prohibition Cases*, 253 U. S. 350, are not at variance with this view. Nor do we think that *Grogan* v. *Walker & Sons Co.* and *Anchor Line* v. *Aldridge*, 259 U. S. 80, are.

In adopting the broad canon of construction which controlled the decision rendered by this Court in the *Grogan* and *Anchor Line Cases*, it is evident that the Court placed emphasis upon the controlling force of the admonition contained in § 3 of Tit. II of the National Prohibition Act, enjoining liberality of construction, to the end that the use of intoxicating liquor as a beverage might be prevented. Let us consider what meaning and purpose are to be assigned to the Eighteenth Amendment and the enforcing act. Certainly the first sense of every law must be that the field of its operation is the country of its enactment. This is equally true of the Eighteenth Amendment and the National Prohibition Act. Necessarily, they get their meaning from the field and purpose of their operation—from the conditions which exist in the field or are designed to be established there. The transportation that they prohibit is transportation within that field—that is, the United States and its Territories, "for

beverage purposes." The transportation and the purposes are, therefore, complements of each other and both must exist to fulfill the declared prohibition. Thus considered, the "admonition" which received such emphasis in the adoption of this broad canon of construction, and was relied upon by the lower court herein, loses all force under the circumstances of the instant case. Liberality of interpretation is enjoined to the end "that the use of intoxicating liquor as a beverage" may be prevented. These words carry with them an unspoken but necessary qualification, namely, "within the United States, its Territories, Hawaii, and the Virgin Islands."

We have said that the transportation and purposes are complements of each other and both must exist to fulfill the required prohibition. The foreign steamship lines do not seek to transport liquor through, for use as a beverage within, the United States, its Territories, Hawaii, or the Virgin Islands.

II. A foreign ship temporarily within the waters of the United States is not "territory subject to the jurisdiction" of the United States, within the meaning of the Eighteenth Amendment and the National Prohibition Act.

The jurisdiction exercised by a State over foreign vessels within her waters has been the subject of much controversy. On the one hand, it is held that, in a sense, the vessel is part of the territory of the Nation to which it belongs, and those on board are subject to its laws, even in a foreign port (Vattel, book 1, c. 19, § 216; Wheat. Int. Law, 157; *Brown* v. *Duchesne*, 19 How. 183; *Wilson* v. *McNamee*, 102 U. S. 572; *United States* v. *Bowman*, 260 U. S. 94), while on the other hand, it is held, with certain reservations, that by voluntarily coming into the waters or ports of one Nation, the ships of another submit themselves to the laws of the former. *United States* v. *Diekelman*, 92 U. S. 520; *Wildenhus's Case*, 120 U. S. 1; *The*

Exchange, 7 Cr. 116, 144. See 2 Moore Int. Law Dig., p. 292; 8 Ops. Atty. Gen. 73; Taylor, Int. Law, § 268; Wheaton, Int. Law, 5th Eng. ed. (Phillipson), p. 169; 2 Wharton, Conflict of Laws, 3d ed., §§ 816, 817; 42 Albany Law Jour., pp. 345–353; 1 Oppenheim, Int. Law, 3d ed., § 189; Ortolan, Diplomatie de la Mer, vol. 1, pp. 192, 193; Gregory, 2 Mich. Law Rev., p. 333; 1 Halleck, Int. Law, 4th ed. (Baker), pp. 245–247; Wheaton, El. Int. Law, 8th ed., § 95, note 58; *United States* v. *Bowman*, 260 U. S. 94.

III. The courts will never give a construction to a statute contrary to international law or the accepted custom and usage of civilized nations, when it is possible reasonably to construe it in any other manner. *The Paquete Habana*, 175 U. S. 677; *Murray* v. *Schooner Charming Betsy*, 2 Cr. 64.

The same rule, *a fortiori*, should apply to the construction of a provision in the Constitution. Presumably, provisions of the latter are not intended to regulate the affairs of foreign nations or to upset established international usage. If, as we contend, the Amendment does not foreclose the question, then it becomes one of statutory construction, namely, whether Congress intended to disregard the long established general rule respecting the jurisdiction of the country of a visiting ship over its internal affairs and to impose its will with respect to such internal management, in cases which cannot in any respect be considered as affecting the peace and order of the port into which the ships come. In construing other statutes which might affect such internal management, the federal courts have been careful to avoid, unless constrained by the obvious, inescapable meaning of the act, giving such construction to the statute as would lead to a conflict of laws, or interference with well settled international usage, or unduly interfere with the internal management of the ship. *The Exchange*, 7 Cr. 116, 136, 146; *Murray* v.

Schooner Charming Betsy, supra, 118; *The Brig Wilson* v. *United States,* Fed. Cas. No. 17,846; *Brown* v. *Duchesne,* 19 How. 183; *The State of Maine,* 22 Fed. 734; *The Kestor,* 110 Fed. 432; *Patterson* v. *Bark Eudora,* 190 U. S. 169; *Wildenhus's Case,* 120 U. S. 1, 11, 12; *Sandberg* v. *McDonald,* 248 U. S. 185; *Neilson* v. *Rhine Shipping Co.,* 248 U. S. 205.

So it uniformly has been held that the acts prohibiting the bringing of Chinese laborers to the United States are not violated by a foreign vessel coming into one of our ports with Chinese as seamen or members of the crew. *In re Moncan,* 14 Fed. 44; *United States* v. *Ah Fook,* 183 Fed. 33; *United States* v. *Burke,* 99 Fed. 895; *United States* v. *Jamieson,* 185 Fed. 165; appeal dismissed 223 U. S. 744.

See *Taylor* v. *United States,* 207 U. S. 120; *Scharrenberg* v. *Dollar S. S. Co.,* 245 U. S. 122.

The executive departments also always have exercised like care in avoiding such interpretative application of statutes as unnecessarily to interfere with international commercial relations. 27 Ops. Atty. Gen. 440.

The care which Congress used to exclude opium from our territorial waters serves also to point out the underlying distinction between the situation there existing and the facts of the instant case. Section 5 of the Opium Act dealt only with smoking opium, which had no legitimate uses and which for years had been considered an international outlaw, the mere presence of which within their borders was considered intolerable by all civilized nations. Here, on the other hand, it appears from an examination of the National Prohibition Act that Congress has permitted the possession and use of intoxicating beverages in the homes of our people if acquired prior to the effective date thereof. The act also repeatedly recognizes as legal the existence of large quantities of bonded liquor within the United States, as also the manufacture, sale and trans-

portation of intoxicating liquor for other than beverage purposes (§ 3 and § 37 of Tit. II). It cannot, therefore, be said that the National Prohibition Act imposes an *unqualified prohibition*, still less can it be said that Congress intended to prevent the mere presence within our borders of intoxicating beverages under any and all circumstances; for the act itself proves a contrary intention. Congress has not only failed to use language sufficient to indicate that liquor could not be possessed within our borders for any purpose, but, under the system of qualified prohibition imposed by the act, there was no reason why it should prohibit the presence of such liquor within our territorial waters as an incidental element to the continuation of international commerce, sanctioned by the usage and custom of civilized nations since the inception of our Government. In marked contrast with this, also, is the record of congressional action respecting the subject under consideration in the cases at bar. From the date of the enactment of the National Prohibition Act, foreign ships had been bringing into American waters and ports liquors as a part of the ships' stores, for consumption by passengers and crew on the high seas, with the approval and subject to regulations promulgated by the Treasury Department, in conformity with international usage and the uniform course of American law and regulation from the foundation of the Government. This was a matter of newspaper notoriety and general knowledge. Treasury decisions had been promulgated which sanctioned the practice, and the Attorney General of the United States had declared its legality and laid down the rules under which it should be conducted. And yet, in the legislation of 1921, by which Congress sought to strengthen the law in other directions and to clothe the courts of the Territory of Hawaii and the Virgin Islands with jurisdiction to enforce the act, no mention was made of this subject and no attempt to broaden the scope of the law,

so as to apply it to foreign vessels in American ports. It seems incredible that, if Congress had intended to apply prohibition to foreign merchant ships, it would not have expressed such intention in the amending act. The fact that it did not, furnishes strong evidence that it had no intention of interfering with the well established usages of international commerce. This moreover is emphasized by the fact that § 5 of the amending act expressly dealt with the application of prohibition to common carriers by land and sea.

It is important to note in this connection that the provisions of the Transportation Act of 1920 are expressly applicable to foreign merchant vessels; and yet, neither the framers of the act, nor those who discussed it on the floors of Congress, suggested that the amending act should be broadened so as to make it clear that the possession by a foreign common carrier by vessel within American waters of intoxicating liquors for beverage purposes, was prohibited by our laws.

When Congress legislated with respect to intoxicating liquors in the Territory of Alaska, by Act of February 14, 1917, 39 Stat. 903, it clearly expressed its intention to apply prohibition to vessels within the territorial waters.

So in dealing with the Canal Zone, Congress, unrestricted by the limitations of the Constitution or the Eighteenth Amendment, but legislating as a domestic legislature, enacted § 20, Tit. III, of the National Prohibition Law. It will be noted that this prohibition went far beyond the Amendment or the National Prohibition Act. It not only prohibited the importation but the introduction into the Canal Zone. It absolutely prohibited possession by an individual or his having under his control any of the described beverages. Then, in order to emphasize its intention that these extreme measures should not be extended so as to interfere with foreign commercial intercourse, it added the proviso.

The provisions affecting the Canal Zone in the National Prohibition Act are not included in the general provisions relating to the United States, but in a specific section incorporated in the act to deal with that place. Section 20, Tit. III, places the Canal Zone in a special position. It will be noted that Congress has not said in the proviso that the *act* shall not apply to liquor in transit through the Panama Canal or on the Panama Railroad, but that "this *section*" shall not apply. In other words, as the language of the section goes far beyond the confines of the Amendment and the act, Congress deemed it necessary to disclaim the application of its provisions, that is, the provisions of the *section*, to commerce passing through the Zone. And, therefore, it cannot be that by referring in § 20 to the carriage on the Panama Canal and on the Panama Railroad, Congress intended that no other transportation of liquor anywhere within the United States, or its possessions, was authorized except through the Canal Zone. The proviso completes the legislation by Congress respecting the Zone, but it has no bearing on the interpretation of the act itself in its application to the United States. It does illustrate the care which Congress has taken in this act, as in so many others, to avoid the implication of legislation affecting foreign merchant vessels, save and except in the particulars where its deliberate and expressed policy was to apply legislation to those ships.

IV. Sea stores on merchant ships are considered as part of the ship itself and always have been exempted from tariff and other laws affecting merchandise introduced into the country. 21 Ops. Atty. Gen. 92, 94; Rev. Stats., § 2807, amended by Act June 3, 1892, 27 Stat. 41; *United States* v. *24 Coils of Cordage*, Fed. Cas. No. 16,566; *United States* v. *One Hempen Cable*, Fed. Cas. No. 15,931a; Treasury Circular Dec. 4, 1922; *Brough* v. *Whitmore*, 4 Term. Rep. 206; *The Dundee*, 1 Hagg. Adm.

109; *Gale* v. *Laurie*, 5 B. & C. 156; English Marine Insurance Act 1906, Arnould Marine Insurance, 10th ed., vol. 2, p. 1659; *id.* vol. 1, p. 295.

A further proof of the incorporation of stores into the ship is the fact that they are valued by surveyors, when valuing the ship for general average contribution, as part of the contributory value of the ship. Lowndes, General Average, § 76. It is also a very interesting fact that, in the case of many European nations, a separate list of ship's stores is considered as part of the ship's papers, in addition to the ordinary cargo manifest. In this connection see Atherly Jones on Commerce in War, pp. 347–352. *United States* v. *Hawley & Letzerich*, 160 Fed. 734.

The laws of Italy, France, and Holland require merchant ships trading with their ports to carry and furnish liquors for the consumption of passengers and crew. In those cases, liquors are *necessaries* within the meaning of the admiralty law. See *The Satellite*, 188 Fed. 717.

It was, therefore, in pursuance of a long applied doctrine of sea law and the consistent legislative policy that, after the adoption of the Eighteenth Amendment and the passage of the National Prohibition Act, the Treasury Department promulgated regulations covering sea stores of liquors which have been in force up to the present time. The new opinion of the Attorney General, and the decision of the District Court in the present cases, present to this Court the question of whether or not the necessary construction of the Prohibition Law overrules this consistent, uniform, continued policy of our Government, and, disregarding all international comity, imposes our domestic regulations upon all foreign vessels coming into our ports.

V. Even if the foreign steamships within American ports or waters should be considered as territory subject to the jurisdiction of the United States, nevertheless the carriage of intoxicating liquors as part of their sea stores,

under the circumstances described in the bill, is not a violation of the Amendment or the statute.

It is well settled law, that the carriage of ship stores on board a foreign vessel coming into ports of the United States, and on its departure therefrom, is neither importation into, nor exportation from, the United States. *Swan & Finch Co.* v. *United States*, 190 U. S. 143, 144; *The Conqueror*, 49 Fed. 99, 102; affd. 166 U. S. 110.

That the carriage of liquors from one point to another within the United States may not amount to transportation within the prohibition of the Amendment and the statute, is recognized in *Street* v. *Lincoln Safe Deposit Co.*, 254 U. S. 88. *United States* v. *254 Bottles of Intoxicating Liquor*, 281 Fed. 247.

The Amendment does not make mere possession of intoxicating liquors unlawful. Its prohibition applies only when one lawfully in possession when the Amendment took effect seeks to sell or transport it within the United States, etc., or to export it therefrom, for beverage purposes. If the National Prohibition Act goes beyond this, it exceeds the authority conferred upon Congress by the Amendment. We do not construe it as going beyond the Amendment. The act, recognizing the lawfulness of possession of liquors in a private dwelling, makes possession elsewhere only *prima facie* evidence that it is possessed for an unlawful purpose, and this evidence, of course, is open to rebuttal by the facts of the case.

The actual basis of *Corneli* v. *Moore*, 257 U. S. 491, is stated in the *Grogan Case*, 259 U. S. 80.

In the cases at bar, the liquors are in the strictest sense in the lawful possession of the owners of the steamships, and they remain immovable within the ship as a part of its sea stores, in effect as a part of the ship, in the same sense in which a cable which had been bought in Liverpool by the master of an American vessel, to replace an old

one worn out, was held to be a part of the ship and not to be treated as imported goods, wares or merchandise, in the case of *United States* v. *A Chain Cable,* 2 Sumner, 362; Fed. Cas. 14,776.

The movement of these liquors within our territorial waters, moreover, can in no proper sense be deemed a "transportation" in any accepted sense of the word. The universal and practical conception of transportation, as applied to any article or commodity under any circumstances, presupposes a carrier of some kind or description separate and distinct from the article or thing transported. *Gloucester Ferry Co.* v. *Pennsylvania,* 114 U. S. 196, 203.

In the present case there is not any separation of the sea stores from the ship. They are incorporated as it were into the body of the ship. Properly considered, sea stores are really aids to transportation rather than the subject matter thereof. While, of course, all parts of the vessel, including masts, spars, tackle and apparel, as well as sea stores, necessarily move with her when she moves, they are not being transported in the sense of that word as understood by our statutes or case law. It is submitted that the transportation prohibited by the Eighteenth Amendment and the National Prohibition Act is transportation in a commercial sense. Undoubtedly this was present in both the *Grogan* and *Anchor Line Cases.*

Specific reference to the question of transportation is found in §§ 13 and 14 of Tit. II of the act, and here Congress considers the question in some detail by requiring the carriers to mark the consignors' and consignees' names on the outside of all packages, in addition to making clear the contents.

Under the *Street Case, supra,* the conveyance from warehouse to residence was held not to be transportation within the act, because the goods were in the owner's possession in a leased room in a warehouse, and in effect

merely transferred by him to his residence. In the *Corneli Case* a different result was reached because the goods were in possession of the warehouse, and the transfer thereof involved commercial transportation of and delivery to the owner at the latter's residence. Sea stores, like bunker coal, belong to the ship owner and are on board his vessel solely for consumption therein. They are not received from any shipper nor are they to be delivered to any consignee, and transportation is not the purpose of their presence on shipboard. They are brought within the territorial waters of the United States merely because it is unavoidable under the circumstances.

If the National Prohibition Act goes beyond the limits of the Amendment, and prohibits mere possession, it is unsupported by the Constitution, and, to that extent at least, unenforceable. While the language of § 3, Tit. II, does prohibit any person to "possess any intoxicating liquor except as authorized in this act," read in connection with § 33, Tit. II, such unauthorized possession would appear only to be *prima facie* evidence of possession for one of the illegal purposes prescribed in the act, and not in and of itself to be punishable. That this construction is correct is emphasized by the provisions of § 20, Tit. III, where the congressional intention clearly expressed with respect to the Canal Zone is to make possession in and of itself a crime, as also to prohibit, not only the technical "importation" into the Zone, but the introduction of liquor into that specific territory. Not only, too, is possession prohibited, but it is made a crime to have "under one's control within the Canal Zone" any of the specified beverages.

If it be suggested that the Prohibition Act, § 33, Tit. II, makes the possession of liquors by any person not legally permitted by its provisions to possess liquor, evidence that such liquor is kept for purposes prohibited by the statute, the answer is that it is only *prima facie* evidence of that fact.

It is our contention that the cases of liquor carried as part of ship stores in foreign merchant vessels, also fairly fall within the obvious implication of § 33, Tit. II, and that an intention to confiscate the private property in these liquors and to extend the jurisdiction of an act which is, in the most emphatic sense of the term, a domestic police regulation, over the internal concerns of foreign ships, and thus indirectly to foist our laws and our conception of the proper use of alcohol for beverage purposes, over the people of other Nations whose usages and laws differ from ours, has not been expressed by the Eighteenth Amendment nor by Congress.

Mr. Cletus Keating, with whom *Mr. John M. Woolsey*, *Mr. J. Parker Kirlin* and *Mr. Ira A. Campbell* were on the brief, for appellant in No. 693.

I. The District Judge erred in holding that intoxicating liquors which have been legally acquired and which are kept and used only as sea stores by vessels of the United States are within the purview of the Eighteenth Amendment.

Sea stores are consumable provisions kept on board a vessel as part of her equipment for the maintenance of her passengers and crew.

Intoxicating liquors, having the status of sea stores and their situs on board a vessel, do not come within any of the prohibitions of the Eighteenth Amendment, although kept on board a vessel of the United States within territorial waters of the United States.

Intoxicating liquors incorporated as sea stores on a vessel, are not the subject of "importation into" the United States.

When a vessel passes out of our territorial waters, sea stores are not the subject of "exportation from" the United States.

Intoxicating liquors incorporated into sea stores, whilst kept on board a vessel of the United States, mov-

ing in territorial waters, are not the subject of "transportation within" the United States.

The possession of intoxicating liquors, lawfully acquired and kept sealed as sea stores, is legal within the territorial waters of the United States.

II. The District Judge erred in holding that vessels of the United States on the high seas and in foreign ports are territory subject to the jurisdiction of the United States, within the meaning of the Eighteenth Amendment, and subject to the penalties of the National Prohibition Act, and hence were not free to sell intoxicating liquors on the high seas and in foreign ports.

The Eighteenth Amendment was not necessary to give Congress power to legislate for lands subject to the jurisdiction of the United States and not included among the several States, or for vessels of the United States engaged in foreign or coastwise commerce.

Vessels of the United States are not "territory subject to the jurisdiction of the United States" within the meaning of the Eighteenth Amendment, nor are they subject to the National Prohibition Act.

The National Prohibition Act does not by its terms apply and was not intended to apply to vessels of the United States on the high seas or in foreign ports.

III. The unnecessary adoption of a fiction in constitutional construction that would attribute to the word "territory" as used in the Eighteenth Amendment a meaning which would include vessels of the United States upon the high seas and in foreign ports, would lead to embarrassing international situations.

IV. Neither the history nor purpose of the Eighteenth Amendment and its enforcement acts indicates any intention on the part of Congress to extend prohibition to vessels of the United States while on the high seas or in foreign ports.

In considering whether Congress intended that vessels of the United States should be considered "territory" within the meaning of the Amendment and the enforcement acts, § 20 of the National Prohibition Act is of great importance.

It seems hardly conceivable that Congress would place an additional obstacle in the way of the establishment of an American merchant marine, when the additional burden imposed was not essential to carry out the fundamental purposes of the prohibition reform. Vessels of the United States engaged in foreign trade go to all parts of the world, and are in competition with ships of foreign nations. The construction of the Amendment and the enforcement acts here contended for would not constitute an interference or limitation upon what everyone realizes is a great national reform.

Mr. Reid L. Carr, with whom *Mr. George Adams Ellis* and *Mr. Frederick H. Stokes* were on the brief, for appellants in No. 694.

The word "territory" as employed in the Eighteenth Amendment must be construed according to the meaning fixed upon it in our constitutional history.

A ship is not territory, within the meaning of the Eighteenth Amendment or the enforcing legislation.

As a matter of statutory construction, the Prohibition Acts negative the intention of Congress to extend their operation to vessels of the United States on the high seas or in foreign ports.

Mr. Solicitor General Beck and *Mrs. Mabel Walker Willebrandt*, Assistant Attorney General, with whom *Mr. Alfred A. Wheat*, Special Assistant to the Attorney General, was on the briefs, for appellees.

Mr. Andrew Wilson and *Mr. Wayne B. Wheeler*, by leave of court, filed a brief as *amici curiae*.

MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

These are suits by steamship companies operating passenger ships between United States ports and foreign ports to enjoin threatened application to them and their ships of certain provisions of the National Prohibition Act. The defendants are officers of the United States charged with the act's enforcement. In the first ten cases the plaintiffs are foreign corporations and their ships are of foreign registry, while in the remaining two the plaintiffs are domestic corporations and their ships are of United States registry. All the ships have long carried and now carry, as part of their sea stores, intoxicating liquors intended to be sold or dispensed to their passengers and crews at meals and otherwise for beverage purposes. Many of the passengers and crews are accustomed to using such beverages and insist that the ships carry and supply liquors for such purposes. By the laws of all the foreign ports at which the ships touch this is permitted and by the laws of some it is required. The liquors are purchased for the ships and taken on board in the foreign ports and are sold or dispensed in the course of all voyages, whether from or to those ports.

The administrative instructions dealing with the subject have varied since the National Prohibition Act went into effect. December 11, 1919, the following instructions were issued (T. D. 38218):

"All liquors which are prohibited importation, but which are properly listed as sea stores on vessels arriving in ports of the United States, should be placed under seal by the boarding officer and kept sealed during the entire time of the vessel's stay in port, no part thereof to be removed from under seal for use by the crew at meals or for any other purpose.

" Excessive or surplus liquor stores are no longer dutiable, being prohibited importation, but are subject to seizure and forfeiture.

"Liquors properly carried as sea stores may be returned to a foreign port on the vessel's changing from the foreign to the coasting trade, or may be transferred under supervision of the customs officers from a vessel in foreign trade, delayed in port for any cause, to another vessel belonging to the same line or owner."

January 27, 1920, the first paragraph of those instructions was changed (T. D. 38248) so as to read:

"All liquors which are prohibited importation, but which are properly listed as sea stores on American vessels arriving in ports of the United States, should be placed under seal by the boarding officer and kept sealed during the entire time of the vessel's stay in port, no part thereof to be removed from under seal for use by the crew at meals or for any other purpose. All such liquors on foreign vessels should be sealed on arrival of the vessels in port, and such portions thereof released from seal as may be required from time to time for use by the officers and crew."

October 6, 1922, the Attorney General, in answer to an inquiry by the Secretary of the Treasury, gave an opinion to the effect that the National Prohibition Act, construed in connection with the Eighteenth Amendment to the Constitution, makes it unlawful (a) for any ship, whether domestic or foreign, to bring into territorial waters of the United States, or to carry while within such waters, intoxicating liquors intended for beverage purposes, whether as sea stores or cargo, and (b) for any domestic ship even when without those waters to carry such liquors for such purposes either as cargo or sea stores. The President thereupon directed the preparation, promulgation and application of new instructions conforming to that construction of the act. Being advised of this and that under the new instructions the defendants would seize all liquors carried in contravention of the act as so construed and would proceed to sub-

ject the plaintiffs and their ships to penalties provided in the act, the plaintiffs brought these suits.

The hearings in the District Court were on the bills or amended bills, motions to dismiss and answers, and there was a decree of dismissal on the merits in each suit. 284 Fed. 890; 285 Fed. 79. Direct appeals under Judicial Code, § 238, bring the cases here.

While the construction and application of the National Prohibition Act is the ultimate matter in controversy, the act is so closely related to the Eighteenth Amendment, to enforce which it was enacted, that a right understanding of it involves an examination and interpretation of the Amendment. The first section of the latter declares, 40 Stat. 1050, 1941:

"Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

These words, if taken in their ordinary sense, are very plain. The articles proscribed are intoxicating liquors for beverage purposes. The acts prohibited in respect of them are manufacture, sale and transportation within a designated field, importation into the same, and exportation therefrom. And the designated field is the United States and all territory subject to its jurisdiction. There is no controversy here as to what constitutes intoxicating liquors for beverage purposes; but opposing contentions are made respecting what is comprehended in the terms "transportation," "importation" and "territory."

Some of the contentions ascribe a technical meaning to the words "transportation" and "importation." We think they are to be taken in their ordinary sense, for it better comports with the object to be attained. In that

sense transportation comprehends any real carrying about or from one place to another. It is not essential that the carrying be for hire, or by one for another; nor that it be incidental to a transfer of the possession or title. If one carries in his own conveyance for his own purposes it is transportation no less than when a public carrier at the instance of a consignor carries and delivers to a consignee for a stipulated charge. See *United States* v. *Simpson*, 252 U. S. 465. Importation, in a like sense, consists in bringing an article into a country from the outside. If there be an actual bringing in it is importation regardless of the mode in which it is effected. Entry through a custom house is not of the essence of the act.

Various meanings are sought to be attributed to the term "territory" in the phrase "the United States and all territory subject to the jurisdiction thereof." We are of opinion that it means the regional areas—of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section show that the term is used in a physical and not a metaphorical sense,—that it refers to areas or districts having fixity of location and recognized boundaries. See *United States* v. *Bevans*, 3 Wheat, 336, 390.

It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles. *Church* v. *Hubbart*, 2 Cranch, 187, 234; *The Ann*, 1 Fed. Cas., p. 926; *United States* v. *Smiley*, 27 Fed. Cas., p. 1132; *Manchester* v. *Massachusetts*, 139 U. S. 240, 257–258; *Louisiana* v. *Mississippi*, 202 U. S. 1, 52; 1 Kent's Com., 12th ed., *29; 1 Moore

International Law Digest, § 145; 1 Hyde International Law, §§ 141, 142, 154; Wilson International Law, 8th ed., § 54; Westlake International Law, 2d ed., p. 187, *et seq;* Wheaton International Law, 5th Eng. ed. (Phillipson), p. 282; 1 Oppenheim International Law, 3d ed., §§ 185–189, 252. This, we hold, is the territory which the Amendment designates as its field of operation; and the designation is not of a part of this territory but of "all" of it.

The defendants contend that the Amendment also covers domestic merchant ships outside the waters of the United States, whether on the high seas or in foreign waters. But it does not say so, and what it does say shows, as we have indicated, that it is confined to the physical territory of the United States. In support of their contention the defendants refer to the statement sometimes made that a merchant ship is a part of the territory of the country whose flag she flies. But this, as has been aptly observed, is a figure of speech, a metaphor. *Scharrenberg* v. *Dollar S. S. Co.*, 245 U. S. 122, 127; *In re Ross,* 140 U. S. 453, 464; 1 Moore International Law Digest, § 174; Westlake International Law, 2d ed., p. 264; Hall International Law, 7th ed. (Higgins), § 76; Manning Law of Nations (Amos), p. 276; Piggott Nationality, Pt. II, p. 13. The jurisdiction which it is intended to describe arises out of the nationality of the ship, as established by her domicile, registry and use of the flag, and partakes more of the characteristics of personal than of territorial sovereignty. See *The Hamilton,* 207 U. S. 398, 403; *American Banana Co.* v. *United Fruit Co.,* 213 U. S. 347, 355; 1 Oppenheim International Law, 3d ed., §§ 123–125, 128. It is chiefly applicable to ships on the high seas, where there is no territorial sovereign; and as respects ships in foreign territorial waters it has little application beyond what is affirmatively or tacitly permitted by the local sovereign. 2 Moore International

Law Digest, §§ 204, 205; Twiss Law of Nations, 2d ed., § 166; Woolsey International Law, 6th ed., § 58; 1 Oppenheim International Law, 3d ed., §§ 128, 146, 260.

The defendants further contend that the Amendment covers foreign merchant ships when within the territorial waters of the United States. Of course, if it were true that a ship is a part of the territory of the country whose flag she carries, the contention would fail. But, as that is a fiction, we think the contention is right.

A merchant ship of one country voluntarily entering the territorial limits of another subjects herself to the jurisdiction of the latter. The jurisdiction attaches in virtue of her presence, just as with other objects within those limits. During her stay she is entitled to the protection of the laws of that place and correlatively is bound to yield obedience to them. Of course, the local sovereign may out of considerations of public policy choose to forego the exertion of its jurisdiction or to exert the same in only a limited way, but this is a matter resting solely in its discretion. The rule, now generally recognized, is nowhere better stated than in *The Exchange*, 7 Cranch, 116, 136, 144, where Chief Justice Marshall, speaking for this Court, said:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.

"All exceptions, therefore, to the full and complete power of a nation, within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.

* * * * * * *

"When private individuals of one nation spread themselves through another, as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. Nor can the foreign sovereign have any motive for wishing such exemption. His subjects thus passing into foreign countries, are not employed by him, nor are they engaged in national pursuits. Consequently, there are powerful motives for not exempting persons of this description from the jurisdiction of the country in which they are found, and no one motive for requiring it. The implied license, therefore, under which they enter, can never be construed to grant such exemption."

That view has been reaffirmed and applied by this Court on several occasions. *United States* v. *Diekelman*, 92 U. S. 520, 525, 526; *Wildenhus's Case*, 120 U. S. 1, 11; *Nishimura Ekiu* v. *United States*, 142 U. S. 651, 659; *Knott* v. *Botany Mills*, 179 U. S. 69, 74; *Patterson* v. *Bark Eudora*, 190 U. S. 169, 176, 178; *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348, 355–356. And see *Buttfield* v. *Stranahan*, 192 U. S. 470, 492–493; *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320, 324; *Brolan* v. *United States*, 236 U. S. 216, 218. In the *Patterson Case* the Court added:

"Indeed, the implied consent to permit them [foreign merchant ships] to enter our harbors may be withdrawn, and if this implied consent may be wholly withdrawn it may be extended upon such terms and conditions as the government sees fit to impose."

In principle, therefore, it is settled that the Amendment could be made to cover both domestic and foreign

merchant ships when within the territorial waters of the United States. And we think it has been made to cover both when within those limits. It contains no exception of ships of either class and the terms in which it is couched indicate that none is intended. Such an exception would tend to embarrass its enforcement and to defeat the attainment of its obvious purpose, and therefore cannot reasonably be regarded as implied.

In itself the Amendment does not prescribe any penalties, forfeitures or mode of enforcement, but by its second section [1] leaves these to legislative action.

With this understanding of the Amendment, we turn to the National Prohibition Act, c. 85, 41 Stat. 305, which was enacted to enforce it. The act is a long one and most of its provisions have no real bearing here. Its scope and pervading purpose are fairly reflected by the following excerpts from Title II:

"Sec. 3. No person [2] shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

"Sec. 21. Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used

[1] The second section says: "The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation." For its construction, see *United States* v. *Lanza*, 260 U. S. 377.

[2] The act contains a provision (§ 1 of Title II) showing that it uses the word "person" as including "associations, copartnerships, and corporations" when the context does not indicate otherwise.

in maintaining the same, is hereby declared to be a common nuisance. . . ."

"Sec. 23. That any person who shall, with intent to effect a sale of liquor, by himself, his employee, servant, or agent, for himself or any person, company or corporation, keep or carry around on his person, or in a vehicle, or other conveyance whatever, . . . any liquor . . . in violation of this title is guilty of a nuisance . . ."

"Sec. 26. When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. . . ."

Other provisions show that various penalties and forfeitures are prescribed for violations of the act; and that the only instance in which the possession of intoxicating liquor for beverage purposes is recognized as lawful is where the liquor was obtained before the act went in effect and is kept in the owner's dwelling for use therein by him, his family, and his *bona fide* guests.

As originally enacted the act did not in terms define its territorial field, but a supplemental provision [3] afterwards enacted declares that it "shall apply not only to the United States but to all territory subject to its jurisdiction," which means that its field coincides with that of the Eighteenth Amendment. There is in the act no provision making it applicable to domestic merchant ships when outside the waters of the United States, nor any provision making it inapplicable to merchant ships, either domestic or foreign, when within those waters, save in the Panama Canal. There is a special provision dealing

[3] Section 3, Act November 23, 1921, c. 134, 42 Stat. 222.

with the Canal Zone[4] which excepts "liquor in transit through the Panama Canal or on the Panama Railroad." The exception does not discriminate between domestic and foreign ships, but applies to all liquor in transit through the canal, whether on domestic or foreign ships. Apart from this exception, the provision relating to the Canal Zone is broad and drastic like the others.

Much has been said at the bar and in the briefs about the Canal Zone exception, and various deductions are sought to be drawn from it respecting the applicability of the act elsewhere. Of course the exception shows that Congress, for reasons appealing to its judgment, has refrained from attaching any penalty or forfeiture to the transportation of liquor while "in transit through the Panama Canal or on the Panama Railroad." Beyond this it has no bearing here, save as it serves to show that where in other provisions no exception is made in respect of merchant ships, either domestic or foreign, within the waters of the United States, none is intended.

Examining the act as a whole, we think it shows very plainly, first, that it is intended to be operative throughout the territorial limits of the United States, with the single exception stated in the Canal Zone provision; secondly, that it is not intended to apply to domestic vessels when outside the territorial waters of the United States,

[4] The pertinent portion of § 20 of Title III, relating to the Canal Zone, is as follows:

"Sec. 20. That it shall be unlawful to import or introduce into the Canal Zone, or to manufacture, sell, give away, dispose of, transport, or have in one's possession or under one's control within the Canal Zone, any alcoholic, fermented, brewed, distilled, vinous, malt, or spirituous liquors, except for sacramental, scientific, pharmaceutical, industrial, or medicinal purposes, under regulations to be made by the President, and any such liquors within the Canal Zone in violation hereof shall be forfeited to the United States and seized: *Provided*, That this section shall not apply to liquor in transit through the Panama Canal or on the Panama Railroad."

and, thirdly, that it is intended to apply to all merchant vessels, whether foreign or domestic, when within those waters, save as the Panama Canal Zone exception provides otherwise.

In so saying we do not mean to imply that Congress is without power to regulate the conduct of domestic merchant ships when on the high seas, or to exert such control over them when in foreign waters as may be affirmatively or tacitly permitted by the territorial sovereign; for it long has been settled that Congress does have such power over them. *Lord* v. *Steamship Co.*, 102 U. S. 541; *The Abby Dodge*, 223 U. S. 166, 176. But we do mean that the National Prohibition Act discloses that it is intended only to enforce the Eighteenth Amendment and limits its field of operation, like that of the Amendment, to the territorial limits of the United States.

The plaintiffs invite attention to data showing the antiquity of the practice of carrying intoxicating liquors for beverage purposes as part of a ship's sea stores, the wide extent of the practice and its recognition in a congressional enactment, and argue therefrom that neither the Amendment nor the act can have been intended to disturb that practice. But in this they fail to recognize that the avowed and obvious purpose of both the Amendment and the act was to put an end to prior practices respecting such liquors, even though the practices had the sanction of antiquity, generality and statutory recognition. Like data could be produced and like arguments advanced by many whose business, recognized as lawful theretofore, was shut down or curtailed by the change in national policy. In principle the plaintiffs' situation is not different from that of the innkeeper whose accustomed privilege of selling liquor to his guests is taken away, or that of the dining-car proprietor who is prevented from serving liquor to those who use the cars which he operates to and fro across our northern and southern boundaries.

It should be added that after the adoption of the Amendment and the enactment of the National Prohibition Act Congress distinctly withdrew the prior statutory recognition of liquors as legitimate sea stores. The recognition was embodied in § 2775 of the Revised Statutes, which was among the provisions dealing with customs administration, and when, by the Act of September 21, 1922, those provisions were revised, that section was expressly repealed along with other provisions recognizing liquors as legitimate cargo. C. 356, Title IV and § 642, 42 Stat. 858, 948, 989. Of course, as was observed by the District Court, the prior recognition, although representing the national policy at the time, was not in the nature of a promise for the future.

It therefore is of no importance that the liquors in the plaintiffs' ships are carried only as sea stores. Being sea stores does not make them liquors any the less; nor does it change the incidents of their use as beverages. But it is of importance that they are carried through the territorial waters of the United States and brought into its ports and harbors. This is prohibited transportation and importation in the sense of the Amendment and the act. The recent cases of *Grogan* v. *Walker & Sons* and *Anchor Line* v. *Aldridge*, 259 U. S. 80, are practically conclusive on the point. The question in one was whether carrying liquor intended as a beverage through the United States from Canada to Mexico was prohibited transportation under the Amendment and the act, the liquor being carried in bond by rail, and that in the other was whether the transshipment of such liquor from one British ship to another in the harbor of New York was similarly prohibited, the liquor being in transit from Scotland to Bermuda. The cases were considered together and an affirmative answer was given in each, the Court saying in the opinion, p. 89:

"The Eighteenth Amendment meant a great revolution in the policy of this country, and presumably and

obviously meant to upset a good many things on as well as off the statute book. It did not confine itself in any meticulous way to the use of intoxicants in this country. It forbade export for beverage purposes elsewhere. True this discouraged production here, but that was forbidden already, and the provision applied to liquors already lawfully made. See *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146, 151, n. 1. It is obvious that those whose wishes and opinions were embodied in the Amendment meant to stop the whole business. They did not want intoxicating liquor in the United States and reasonably may have thought that if they let it in some of it was likely to stay. When, therefore, the Amendment forbids not only importation into and exportation from the United States but transportation within it, the natural meaning of the words expresses an altogether probable intent. The Prohibition Act only fortifies in this respect the interpretation of the Amendment itself. The manufacture, possession, sale and transportation of spirits and wine for other than beverage purposes are provided for in the act, but there is no provision for transshipment or carriage across the country from without. When Congress was ready to permit such a transit for special reasons, in the Canal Zone, it permitted it in express words. Title III, § 20, 41 Stat. 322."

Our conclusion is that in the first ten cases—those involving foreign ships—the decrees of dismissal were right and should be affirmed, and in the remaining two—those involving domestic ships—the decrees of dismissal were erroneous and should be reversed with directions to enter decrees refusing any relief as respects the operations of the ships within the territorial waters of the United States and awarding the relief sought as respects operations outside those waters.

Decrees in Nos. 659, 660, 661, 662, 666, 667, 668, 669, 670 and 678, *Affirmed.*

Decrees in Nos. 693 and 694, *Reversed.*

MR. JUSTICE MCREYNOLDS, dissents.

MR. JUSTICE SUTHERLAND, dissenting.

I agree with the judgment of the Court in so far as it affects domestic ships, but I am unable to accept the view that the Eighteenth Amendment applies to foreign ships coming into our ports under the circumstances here disclosed.

It would serve no useful purpose to give my reasons at any length for this conclusion. I therefore state them very generally and briefly.

The general rule of international law is that a foreign ship is so far identified with the country to which it belongs that its internal affairs, whose effect is confined to the ship, ordinarily are not subjected to interference at the hands of another State in whose ports it is temporarily present, 2 Moore, Int. Law Dig., p. 292; *United States* v. *Rodgers*, 150 U. S. 249, 260; *Wildenhus's Case*, 120 U. S. 1, 12; and, as said by Chief Justice Marshall, in *Murray* v. *Schooner Charming Betsy*, 2 Cranch, 64, 118: " . . . an act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains. . . ."

That the Government has full power under the Volstead Act to prevent the landing or transshipment from foreign vessels of intoxicating liquors or their use in our ports is not doubted, and, therefore, it may provide for such assurances and safeguards as it may deem necessary to those ends. Nor do I doubt the power of Congress to do all that the Court now holds has been done by that act, but such power exists not under the Eighteenth Amendment, to whose provisions the act is confined, but by virtue of other provisions of the Constitution, which Congress here has not attempted to exercise. With great deference to the contrary conclusion of the Court, due regard for the principles of international comity, which exist be-

tween friendly nations, in my opinion, forbids the construction of the Eighteenth Amendment and of the act which the present decision advances. Moreover, the Eighteenth Amendment, it must not be forgotten, confers concurrent power of enforcement upon the several States, and it follows that if the General Government possesses the power here claimed for it under that Amendment, the several States within their respective boundaries, possess the same power. It does not seem possible to me that Congress, in submitting the Amendment or the several States in adopting it, could have intended to vest in the various seaboard States a power so intimately connected with our foreign relations and whose exercise might result in international confusion and embarrassment.

In adopting the Eighteenth Amendment and in enacting the Volstead Act the question of their application to foreign vessels in the circumstances now presented does not appear to have been in mind. If, upon consideration, Congress shall conclude that when such vessels, in good faith carrying liquor among their sea stores, come temporarily into our ports their officers should, *ipso facto*, become liable to drastic punishment and the ships themselves subject to forfeiture, it will be a simple matter for that body to say so in plain terms. But interference with the purely internal affairs of a foreign ship is of so delicate a nature, so full of possibilities of international misunderstandings and so likely to invite retaliation that an affirmative conclusion in respect thereof should rest upon nothing less than the clearly expressed intention of Congress to that effect, and this I am unable to find in the legislation here under review.